

shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to delegated authority has the effect of an action taken by the Board.

§ 400.105 Staff.

(a) *Executive Director.* The Executive Director of the Board advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *General Counsel.* The General Counsel of the Board provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary of the Board.* The Secretary of the Board sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board and performs such other duties as the Board may require.

§ 400.106 Ex parte communications.

Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited. This section also applies to the Board's staff and employees of the constituent agencies who are or reasonably may be expected to be involved in the decisional process of the matter pending before the Board.

§ 400.107 Freedom of Information Act.

(a) *Definitions.* All terms used in this section which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA*, as used in this section, means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or

profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they